



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

April 18, 1990

Mr. Hilary B. Doran, Jr.  
Chairman  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711-2080

Open Records Decision No. 548

Re: Status under the Open  
Records Act of information  
subject to sections 2.15 and  
5.04 of article 179e, V.T.C.S.,  
the Texas Racing Act (RQ-1776)

Dear Mr. Doran:

The Texas Racing Commission received an open records request for a copy of a report prepared for the commission by the Texas Department of Public Safety (DPS) concerning a background investigation of an applicant for a Class 2 racing license, and for a transcript of the testimony taken at the license hearing. The DPS report contains information about a racetrack owner, including criminal history record information. According to the transmittal letter from the DPS accompanying the report, much of this information was derived either from the applicant's disclosure form submitted with the application for a racing license or from a search of federal records, county courthouse records, and corporation records. The report was discussed at an administrative hearing held in connection with the application. The hearing was held pursuant to the Texas Open Meetings Act, article 6252-17, V.T.C.S. The commission considers the report to be excepted from required public disclosure under section 3(a)(1) of the Open Records Act as information deemed confidential by law, specifically section 5.04(c) of article 179e, V.T.C.S. (Texas Racing Act). No exception is raised with regard to the tape or transcript of the testimony given at the hearing. The transcript or tape of the hearing is public. Attorney General Opinion JM-67 (1987); Open Records Decision Nos. 491 (1988); 32 (1974) (tape of open meeting is public information).

The Texas Racing Act provides for the regulation and control of pari-mutuel wagering in connection with horse and greyhound racing. Sections 2.15 and 5.04(c) contain confidentiality provisions concerning various records obtained or kept by the commission pursuant to its various statutory duties. Section 5.04(a) authorizes the commission to obtain criminal history record information about applicants for racetrack licenses from the Department of

Public Safety or the Federal Bureau of Investigation Identification Division. Section 5.04(b) authorizes the commission to obtain criminal history record information from any law enforcement agency. Section 5.04(c) deals specifically with the confidentiality of criminal history record information so obtained and provides as follows:

The criminal history record information received under this section is for the exclusive use of the commission and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or with the consent of the applicant.

See generally 42 U.S.C. 3789g; 28 C.F.R. 20.30; see also Attorney General Opinion MW-95 (1979).

Section 5.04(c) unambiguously makes criminal history record information obtained from law enforcement agencies such as DPS confidential. Criminal history record information is for the exclusive use of the commission and not for dissemination to the general public under the Open Records Act.

Moreover, section 5.04(c) must be read in light of section 2.15, which applies to the information other than criminal history information found in the DPS report. Section 2.15 provides as follows:

All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.<sup>1</sup>

The commission's investigatory records are thus confidential except for the limited purposes of a commission hearing or a criminal proceeding. In section 5.04(c) the phrase "exclusive use of the commission" encompasses the hearing at

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1. The confidentiality protection of section 2.15 does not apply to racetrack license applications, but only to the commission's own investigatory efforts. See Open Records Decision No. 522 (1989).

which such information is discussed or at which it may be introduced. Although some of the criminal history record information may be disclosed from the taped or transcribed testimony, the criminal history information in the report obtained from DPS remains confidential, and its confidentiality is not violated by its use in an administrative hearing. See Attorney General Opinion MW-578 (1982) (information deemed confidential by statute may be discussed during a hearing or open meeting without violating statutory confidentiality); see also Attorney General Opinion H-683 (1975).

Open Records Decision No. 522 (1989) stated in dicta as follows:

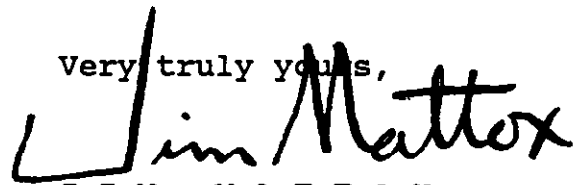
Moreover, section 2.15's protection for investigative files does not apply when the investigation results in a commission hearing or in criminal proceedings.

Open Records Decision No. 522 at 2. This statement suggests that the investigative files (aside from criminal history information) would become public in their entirety once used in a hearing. This construction of section 2.15 is inconsistent with its language, and it will not be followed. Open Records Decision No. 522 is modified to the extent it is inconsistent with this decision.

#### S U M M A R Y

Criminal history record information obtained by the Texas Racing Commission from the Department of Public Safety pursuant to section 5.04 of article 179e, V.T.C.S., is confidential by law and not subject to public disclosure under the Open Records Act. Such information does not become public, nor is its confidential character altered simply because it is discussed in an administrative hearing as authorized by section 2.15 of article 179e, V.T.C.S.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly stylized font. The first letter "J" is large and loops around the "i". The "M" is also large and has a distinctive shape. The "T" is simple, and "Mattox" is written in a fluid, connected script.

J I M M A T T O X  
Attorney General of Texas

MARY KELLER  
First Assistant Attorney General

JUDGE ZOLLIE STEAKLEY  
Special Assistant Attorney General

RENEA HICKS  
Special Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by David A. Newton  
Assistant Attorney General